

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**NATHANIEL STILLWELL and
MICHAEL HOWARD, individually and
on behalf of all others similarly situated**

PLAINTIFFS

v.

No. 4:19-cv-799-DPM

**BESTWAY RENTAL, INC.; JOHN DOE;
and LIBERTY MUTUAL FIRE
INSURANCE COMPANY**

DEFENDANTS

ORDER

Howard, a Stillwell employee, was driving a truck and towing an excavator and trailer owned by Stillwell. Doe was driving a truck owned by Bestway and insured by Liberty Mutual. The trucks collided; Howard and Stillwell say they sustained damages. They claim negligence by Doe and Bestway, and they bring individual and class claims for bad faith against Liberty Mutual.

The claims against Liberty Mutual are dismissed without prejudice. Arkansas law doesn't allow Howard and Stillwell, as injured third parties, to sue Bestway's insurer for bad faith. The Court agrees with Chief Judge Waters's reasoning and conclusion in *Bell v. Kansas City Fire & Marine Insurance Co.*, 616 F. Supp. 1305, 1309 (W.D. Ark. 1985), which rested on *Greer v. Mid-West National Fire & Casualty Insurance Co.*, 434 F.2d 215, 218 (8th Cir. 1970) and *Aetna*

Casualty & Surety Co. v. Broadway Arms Corp., 281 Ark. 128, 133–34, 664 S.W.2d 463, 465 (1984). Also, Howard and Stillwell can't sue under Arkansas Code Annotated § 23-89-101 because there's no judgment; nor can they sue under § 23-79-208 because they haven't pleaded any assignment from Bestway.

Liberty Mutual's motion to dismiss, *No 11*, is granted as modified. The dismissal is without prejudice because a bad-faith claim belonging to Doe and Bestway might accrue in the future, and it might end up in Stillwell's and Howard's pockets.

The Court wonders whether there is enough overlap between this case and No. 4:18-cv-696-JM that they are better handled by one judge. The Court would appreciate the parties' thoughts. Please file notice, joint or separate, by 31 January 2020.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

21 January 2020